

Employer Status Determination
Rail Car America, Inc.
American Hydraulics, Inc.

This is the decision of the Railroad Retirement Board regarding the status of Rail Car America, Inc. (RCA), and American Hydraulics, Inc. (AHI), as employers under the Railroad Retirement and Railroad Unemployment Insurance Acts.

RCA is a privately-held company which was incorporated March 13, 1979, and began operations November 1979. It has two employees and provides administrative services for some of its subsidiaries. None of its services are provided for railroads whether affiliated or unaffiliated. Mr. Harold A. Whitbeck, who is a director and principal officer of Brandon Corporation, which was held to be a rail carrier employer under the Acts effective April 3, 1978 (B.A. No. 4775), is also a director and principal officer of RCA. Brandon Corporation is a switching railroad with one employee.

AHI, which is owned by RCA, was incorporated and began operations October 18, 1982, and rebuilds and repairs rail car cushioning devices. It has 52 employees. Mr. Whitbeck is also a director and principal officer of AHI. Of AHI's business 12.70 percent is with the rail industry in general, none of that business being with affiliated railroads.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer" in part as follows:

The term "employer" shall include:

(i) any ... carrier by railroad, subject to part I of the Interstate Commerce Act:

(ii) any company which is directly owned or controlled by, or under common control with one or more carriers ... and which operates any equipment or facility or performs any service ... in connection with the transportation of passengers or property by railroad....

The evidence establishes that neither RCA nor AHI is a carrier by railroad under paragraph (i). The question then becomes whether these companies are covered under paragraph (ii).

Although AHI is owned by RCA and the evidence suggests that Brandon and RCA may be under common control, the evidence establishes that RCA does not provide any services for Brandon or any other railroad and that AHI, which does 12.70 percent of its business with the

railroad industry, does not provide any services for Brandon. RCA is not an employer under section 1(a)(1)(ii) of the Railroad Retirement Act as it does no business with the railroad industry.

Although AHI does some business with the railroad industry, in B.C.D. 93-79, Employer Status Determination - VMV Enterprises, the Board ruled that a company providing only minimal service for its railroad affiliate, 2.5 percent, was not providing a service in connection with railroad transportation. Based on our ruling in B.C.D. 93-79, the Board finds that AHI is not providing a service in connection with railroad transportation. Accordingly, neither RCA nor AHI is an employer under paragraph (ii) of section 1(a)(1) of the Railroad Retirement Act.

It is the determination of the Board that RCA is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act and of a majority of the Board that AHI is not an employer under those Acts.

Glen L. Bower

V. M. Speakman, Jr. (*dissenting
opinion attached*)

Jerome F. Kever

MCLitt:mcl:ik:cmw
C. 2112-93
RCA.COV

18 January 1994

Tom -

I don't see that Union Pacific governs this case.

Rail Car America owns American Hydraulics. According to counsel for both companies, Rail Car America, which has two employees, provides some administrative services for its subsidiaries but not for American Hydraulics. American Hydraulics does rebuilds and repairs rail car cushioning devices. It has 52 employees. Of AHI's business 12.70 percent is with the rail industry in general (although this percentage leaves 20 percent of its effort unaccounted for - 67.30 percent is for non-railroad customers).

Brandon Corporation is a rail carrier employer. There is nothing in the record to indicate that Brandon has an ownership interest in Rail Car America. Mr. Whitbeck is a director and principal officer of all three companies.

Based on the information we have Rail Car America could be held to be not an employer based on its not providing any services. But if Rail Car America is owned by Brandon then American Hydraulics is an direct subsidiary of a carrier & is providing services to the rail industry.

1) We could hold both companies to be not covered based on Rail Car not providing any services at all & American Hydraulics not providing any services to an affiliated railroad, leaving the ownership question open.

2) We could return the case to BREA for further development regarding ownership.

M
C
L

11 February 1994

Steve -

I don't think so. AHI doesn't provide services for Brandon, a carrier with which AHI may be affiliated. It is represented to us that AHI is owned by Rail Car which is privately held & is not owned by a railroad (see the last line of the second paragraph). We have a list of the carriers with which AHI does business.

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